

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISC CAUSE NO. 277/2013

1. DR. ODOI TANGA

2. DEUS. K. MUHWEZI:.....:APPLICANTS

-VS

PROF. MONDO KAGONYERA

CHANCELLOR MAKERERE UNIVERSITY:.....: RESPONDENT

BEFORE HON. JUSTICE NYAZI YASIN

RULING

BACK GROUND

The back ground to this application is given by the contents of the motion as its grounds. It is revealed in the grounds of the motion that:-

- i. The first applicant is employed by Makerere University as a Lecturer while the second applicant is employed by the same institution but as an Assistant Lecturer.
- ii. That the University Council through the senate initiated a process of appointing substantive Principals and Deputy Principal of Colleges to replace those in acting capacities.

- iii. That the senate through its search committees selected suitable candidates to fill up the positions of principal and of deputy Principal in different Colleges under the College Statutes and under the Universities and other Tertiary Institutions Act.
- iv. That the respondent appointed the principal College of Humanities, Deputy Principal College of Agriculture and Environmental/Sciences and College of Veterinary Medicine and that was done after.
- v. The results of the search committee were endorsed and the council forwarded the successful candidates for appointment to relevant office.
- vi. The respondent refused to appoint the Deputy Principal, College of Humanities, Principal College of Agriculture and Environmental Sciences and Principal College of Veterinary Medicine.

2. The applicants who are employees of the respondent brought this application Under S.36 of the Judicature Act and S.1 11/2009 the Judicatures (Judicial review) Rules seeking an Order of mandamus compelling the respondent to appoint.

- The Deputy Principal College of Humanities
- Principal – College of Agriculture and of Environmental Sciences
- Principal Veterinary Medicine.

3. On the 13th day of June /2013, the present motion was filed and served on the respondent institution on the 23/08/13, at the office of the Vice

Chancellor. An affidavit of service was returned by one **KYABAGGU REYMOND** a process server working with M/S SSEKANA ASSOCIATES ADVOCATES who are Counsel for the Applicants.

4. On the 2nd, Sept 2013 the same process server served a hearing notice of the application fixed on 5th Sept 2013 at 9:30 am.

On that day both advocates of the parties attended Court.

Mr. Ssekaana Musa appeared for the applicants while Mr. Micheal Balimurukubo appeared on brief for Mr. Denis Wamala.

5. Having been served with the motion on 23/8/2013, on the 5/09 /2013 Mr. Balimurukubo told Court that they received a very short notice and they had not filed a response to the applications. The applicant's advocate did not object and court gave up to the 23/09/ 2013 to the respondent.
6. On that day the two advocates still attended Court. Musa Sekaana was ready to proceed. Mr. Balimurukubo was not. He explained that he had failed after all efforts to get the University Secretary to depone an affidavit in reply and that he also understood the case had been settled.
7. The Court observed that in its view it could not be said that it is the University Secretary alone who could depone affidavit in reply. The person

the documents referred to was prof. Kagonyera. He was therefore the best qualified to reply.

8. On the position of a likely settlement Balimurukubo talked about but Mr. SSEKAANA denied knowledge of, court was of the view that if any settlement is worked out the parties should file a consent Order.

9. Finally the Court directed as below-

“If the two parties do not agree, Mr. Ssekaana will file his written submission by 17th Oct 2013 Mr. Balimurikubo will reply by 30th Oct, 2013 the Ruling to be delivered on notice”

10. On the 10th Oct 2013 the Applicant filed their written submission through Musa Ssekaana. On the side of the respondent, no affidavit in reply was filed despite being given the time to do so by Court. Equally no written submissions were filed contrary to the directive the Court gave on the hearing of 2/09/2013.

11. Although I did not specifically state the particular Order and Rule Under which I had made the directions, it obviously have been made under O.17r 4 CPR.

The respondent did not comply with any of the directives of Court which required it to do an act to, further the progress of the hearing of this application. They were offered the right to be heard and rejected it.

12. I recently made a ruling on similar facts. In that case the defendants was given time by Court and ordered to file written statement on oath as an act to further the progress of the case. The defendant failed and later applied to set aside the exparte proceedings. I rejected the application. I held that by not conforming to the requirements in 0. 17r 4 as Court directed the applicant had denied himself the right to be heard. That decision is applicable here see **KAMPALA INTERNATIONAL UNIVERSITY & 2 ORS –VS- HON JUSTICE PROF KEYAHABS MISC APPLICATION NO. 219 OF 2013.**

13. I therefore take it that this application was presented exparte at option of the respondent. It was not opposed either by an affidavit in reply or written submission.

14. I agree with Musa Ssekaana that the respondent had a statutory duty to execute that he did not. Under Regulation 12 of the **Universities and Other Tertiary Institutions(Management of Constituent Colleges of Makerere University Statute 2012** It is provided that”

“There shall be a principal for each College who shall be appointed by the University Chancellor on the recommendation of the University Council from three candidates recommended by the senate.

15. The affidavit in support of this application shows that all the above requirements were fulfilled. There is no evidence to the contrary before this Court.

Annexure” A” to the affidavit of Denis Muhwezi gives a lot of details in this regard. Regulation 17 of the same Regulations cited above provide for the appointment of the Deputy Principal of each College by the University Chancellor on recommendation of the University senate and with approval of the council.

16. As I said annexure “A” gives the details of what transpired and how each relevant officer was appointed.

17. Annexure” B” shows that the respondent was officially informed of the appointment that had been made in conformity with the Regulations. The chancellor was referred to S. 29 (2) (a) and (b) of **University and other Tertiary Institutions Act 2001** which imposed a duty upon him to appoint the relevant officers in conformity with the section 29. The wording of S. 29 is similar to regulation 12 and 17 of the Regulations applicable. Annexure “B” expressly stated the officers who were appointed in the back grounds annexure” A” gives”.

18. I notice that the respondent raised concern that only one name had been submitted contrary to the ordinary practice of 3 names. That concern is contained in annexure” C” a letter by prof Mondo, the Chancellor to the Chairperson of Makerere University Council but that concern was in my view adequately replied to by the Chairperson in Annexure “D.” That is not to say that I share the council’s

interpretation but if the respondent wanted any other interpretation it would not have thrown away their chance in Court for S. 29 and Reg, 12 and 17 to be interpreted. They did not contest the chairperson's views as presented in annexure" D"

19. The applicant's Counsel cited to this Court the decision in **REP & ORS**

-VS- AG & ANOR[2006]2 EA 265. It was held that whenever a public Authority fails to act in accordance with the law or within the four corners of the law it can then be compelled to act accordance with the law.

I was also referred to **SHAH -VS- AG** where Court noted that;-

“ In mandamus cases it is recognized that when a statutory duty is upon crown servant in his official capacity and the duty is not owed to the crown by the public any person having sufficient legal interest in the performance of the duty may apply to the court for an order of mandamus to enforce it.....”

20. My view is that under S. 29 of the Act and Regulation 12 and 17 of the applicable Regulations cited earlier, the respondent has a duty of a statutory nature to appointment the relevant principals and deputy principals.

21. The applicants being members of staff of the respondent have a sufficient legal interest in the appointment of the relevant heads of the Colleges.

22. The respondent having not filed any affidavit in reply or submission as directed under .0.17 r 4 CPR, cannot have its case presented to court. I took it that it excluded itself from the exercising its rights to be heard. In the result I allow the application. An Order of mandamus is hereby made directing the chancellor of the Makerere University to appoint a Deputy Principal College of Humanities, Principal College of Agricultural and Environmental sciences and Principal College of Veterinary Medicine

The above order must be complied within 30 days from the date of this ruling.

I award costs of this application to the applicants.

.....

NYANZI YASIN

JUDGE

28/3/2014

